

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

7	CHAD M. CARLSEN and SHASTA	}	NO. CV-09-246-LRS
	CARLSEN, husband and wife, et al.,		ORDER GRANTING
8	Plaintiffs,	}	MOTION FOR PRELIMINARY
	v.		INJUNCTION
10	GLOBAL CLIENT SOLUTIONS,	}	
11	LLC, an Oklahoma limited liability,		
12	company; ROCKY MOUNTAIN	}	
13	BANK & TRUST, a Colorado		
14	financial institution, et. al.,		
	Defendants.		

15 **BEFORE THE COURT** is the Plaintiffs' Motion For Preliminary
 16 Injunction Of State Court Action (ECF No. 243). The motion is heard without
 17 oral argument on an expedited basis after briefing by the parties.

18 In order to obtain a preliminary injunction, a plaintiff must establish
 19 irreparable harm is likely, not just possible. *Winter v. Natural Resources Defense*
 20 *Council*, 555 U.S. 7, 129 S.Ct. 365, 375-76 (2008). "A plaintiff seeking a
 21 preliminary injunction must establish that he is likely to succeed on the merits, that
 22 he is likely to suffer irreparable harm in the absence of preliminary relief, that the
 23 balance of the equities tips in his favor, and that an injunction is in the public
 24 interest." *Id.* at 374. "A preliminary injunction is an extraordinary remedy never
 25 awarded as of right." *Id.* at 376.

26 In *Alliance For The Wild Rockies v. Cottrell*, 632 F.3d. 1127 (9th Cir. 2011),
 27 the Ninth Circuit Court of Appeals held the "serious questions" version of the
 28 sliding scale test for preliminary injunctions remains viable after the U.S. Supreme

1 Court's decision in *Winter*. Under the sliding scale approach, the elements of the
 2 preliminary injunction test, as articulated by the Supreme Court in *Winter*, are
 3 balanced so that a stronger showing of one element may offset a weaker showing
 4 of another. *Id.* at 1132. Thus, a stronger showing of irreparable harm might
 5 offset a lesser showing of likelihood of success on the merits. *Id.* In the Ninth
 6 Circuit, the "serious questions" version of the sliding scale test is as follows:

7 A preliminary injunction is appropriate when a plaintiff
 8 demonstrates . . . that serious questions going to the
 9 merits were raised and the balance of hardships tips
 sharply in the plaintiff's favor.

10 *Id.* at 1134-35, quoting *Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir.
 11 2008). According to the Ninth Circuit, although this test remains viable after
 12 *Winter*, a plaintiff must still "satisfy the other *Winter* factors." *Id.* at 1135. "[T]he
 13 'serious questions' approach survives *Winter* when applied as part of the four-
 14 element *Winter* test" such that "'serious questions going to the merits' and a
 15 balance of hardships that tips sharply towards the plaintiff can support issuance of
 16 a preliminary injunction, so long as the plaintiff also shows that there is a
 17 likelihood of irreparable injury and that the injunction is in the public interest."

18 *Id.*

19 Having reviewed the parties' briefing and being fully advised in this matter,
 20 the court concludes issuance of a preliminary injunction is warranted.

21 On October 13, 2011, this court entered an "Order Granting Motion To
 22 Compel" (ECF No. 134) in favor of Plaintiffs, finding "[t]he identities of any debt
 23 settlement companies which have or had Washington residents as clients, and
 24 information pertaining to those companies, is relevant to showing whether GCS
 25 [Global Client Solutions] special purpose accounts are in service of debt adjusting,
 26 and whether GCS's management of those accounts violated Washington's Debt
 27 Adjusting Act, RCW Chapter 18.28." The court required GCS to provide this
 28 information to Plaintiffs.

1 On October 25, 2011, the parties filed a “Stipulation For Confidentiality”
 2 (ECF No. 150) regarding designation of information produced in discovery as
 3 “confidential.” Although the parties requested the court to enter an order
 4 approving their stipulation, it declined to do so for the reasons stated in its October
 5 27, 2011 “Order Re ‘Stipulation For Confidentiality.’” (ECF No. 156).
 6 Nevertheless, the court acknowledged the right of the parties to enter into an
 7 agreement regarding confidentiality. One of the provisions of their agreement is
 8 as follows:

9 The Court shall retain jurisdiction, even after termination
 10 of this lawsuit: (a) to make such amendments, modifications
 11 and additions to this Stipulation as it may from time to time
 12 be deemed appropriate upon good cause shown; and (b) to
 13 adjudicate any dispute respecting improper use or disclosure
 14 of confidential information.

15 A “Class Action Settlement Agreement And Release” was eventually
 16 reached by the parties and approved by this court. (ECF No. 218). Judgment was
 17 entered pursuant to the agreement. (ECF No. 219). One of the provisions of the
 18 agreement addresses the “Continuing Jurisdiction” of this court:

19 The United States District Court for the Eastern
 20 District of Washington shall have continuing jurisdiction
 21 over this Class Action for the purpose of implementing
 22 the Settlement and all related matters, including this
 23 Settlement Agreement, Final Approval of the Settlement,
 24 Final Judgment **and post-judgment issues.**

25 (ECF No. 239-2 at 000051)(emphasis added).

26 Based on the aforementioned provisions, this court finds there are “serious
 27 questions” as to whether this court is not the proper judicial entity to resolve the
 28 parties’ dispute regarding an improper use or disclosure of alleged confidential
 1 information. Pursuant to the All Writs Act, 28 U.S.C. §1651, this court has the
 2 authority “to enjoin state proceedings that interfere, derogate, or conflict with
 3 federal judgments, order or settlements.” *Hanlon v. Chrysler Corp.*, 150 F.3d
 4 1011, 1025 (9th Cir. 1998). Furthermore, the Anti-Injunction Act, 28 U.S.C.
 5 §2283, does not bar issuance of an injunction by this court “where necessary in aid

1 of its jurisdiction, or to protect or effectuate its judgments.” The balance of
2 hardships tips sharply in favor of Plaintiffs and there is a likelihood of irreparable
3 injury to them in that allowing a court in different jurisdiction to resolve the
4 dispute at issue may deprive them of the benefit for which they bargained, that
5 being vesting this court with continuing jurisdiction over “post-judgment issues,”
6 including adjudication of “any dispute respecting improper use or disclosure of
7 confidential information.” There is no apparent prejudice to Defendant GCS
8 which, even if this court ultimately decides it has exclusive jurisdiction to
9 determine if there has been an improper use or disclosure of confidential
10 information, will have a full and adequate opportunity to persuade this court that
11 Plaintiffs’ counsel have improperly used or disclosed confidential information.
12 Finally, a preliminary injunction is in the public interest, that being that federal
13 and state courts exercise jurisdiction over matters with which they have been
14 properly vested with such jurisdiction.

15 Plaintiffs’ Motion For Preliminary Injunction Of State Court Action (ECF
16 No. 243) is **GRANTED**. Pending further order of this court, all legal proceedings
17 in the case of *Global Client Solutions v. The Scott Group, et al.*, in the District
18 Court of Tulsa County, State of Oklahoma, Case No. CJ-2012-04229, are
19 **ENJOINED** and **STAYED**. Pending further order of this court, the Temporary
20 Restraining Order and Order Setting Hearing entered in that case are **ENJOINED**,
21 **STAYED**, and without legal effect. Pending a showing that Defendants are likely
22 to be damaged as a result of the entry of this Preliminary Injunction Order, no
23 injunction bond from Plaintiffs shall be required. *Johnson v. Couturier*, 572 F.3d
24 1067, 1086 (9th Cir. 2009).

25 Plaintiffs’ Motion To Enjoin State Court Action (ECF No. 236), which
26 seeks a permanent injunction, is currently noted for hearing without oral argument
27 on September 17, 2012.
28

IT IS SO ORDERED. The District Court Executive is directed to forward copies of this order to counsel of record. Counsel for GCS will advise the Tulsa County District Court of this preliminary injunction so that the August 28 preliminary injunction hearing in that court is vacated.

DATED this 23rd day of August, 2012.

s/Lonny R. Suko

LONNY R. SUKO
United States District Court Judge